

Montana Water Court
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FILED
04/24/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
40D-0302-R-2022
Nordlund, Julia
2.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
BIG DRY CREEK - BASIN (40D)
PRELIMINARY DECREE

CLAIMANT: Weeding Ranch Inc.

CASE 40D-0302-R-2022

40D 38856-00

40D 38857-00

40D 38858-00

40D 38859-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claims 40D 38856-00, 40D 38857-00, 40D 38858-00, and 40D 38859-00 appeared in the Preliminary Decree for the Big Dry Creek (Basin 40D) with issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation (DNRC). The claims did not receive objections, counterobjections, or notices of intent to appear. To address the issue remarks, the Water Court consolidated the claims into case 40D-0302-R-2022.

FINDINGS OF FACT

1. Claim 40D 38856-00 received the following issue remarks:

RESERVOIR RECORD WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 3.4 TIMES THE CAPACITY OF THE RESERVOIR.

2. Claim 40D 38857-00 received the following issue remark:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A DAM.

3. Claim 40D 38858-00 received the following issue remark:

THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM LONG COULEE.

4. Claim 40D 38859-00 received the following issue remark:

THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM UNNAMED TRIBUTARY OF BIG DRY CREEK.

5. Claimant was given a deadline of March 10, 2023. If nothing was filed, the Court stated it would change the abstract to match what the remarks recommended.

6. No response was filed.

7. The following changes should be made:

8. Claim 40D 38857-00

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESW	31	18N	36E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: ~~DIVERSION~~ DAM

9. Claim 40D 38858-00

Source Name: ~~UNNAMED TRIBUTARY OF BIG DRY CREEK~~ LONG COULEE

Source Type: SURFACE WATER

10. Claim 40D 38859-00

Source Name: ~~UNNAMED TRIBUTARY~~ BIG DRY CREEK

Source Type: SURFACE WATER

11. The remaining issue remarks are either for notice purposes only or do not overcome the prima facie status of the claims and should be removed.

CONCLUSIONS OF LAW

1. The Water Court has exclusive jurisdiction to determine the extent of all water rights in Montana as they existed prior to July 1, 1973. *In re Deadman's Basin Water Users Ass'n*, 2002 MT 15, ¶ 15; Section 3-7-501, MCA.

2. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2). The Court has authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

3. When resolving issue remarks, the Court must weigh the issue remark and the information resulting in the issue remark against the claimed water right. Section 85-2-247(2), MCA. The Water Court is permitted to use information submitted by DNRC, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

4. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie status may be overcome by a preponderance of the evidence showing that an element of the claim is incorrect.

Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33.

5. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Court, the Court may upon motion or its own initiative, issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.

6. Sanctions for a claimant’s failure to comply with an order issued by the Court in its review of issue remarks include: 1) amending elements of the claim to conform with information in the claim file, 2) amending element of the claim to conform with information obtained by the court, or 3) removing the issue remark. Section 85-2-248(9), MCA; Rule 22, W.R.Adj.R.

7. Claimant Weeding Ranch Inc. failed to respond to the Water Court’s Order Setting Filing Deadline. Therefore, it is proper for the Water Court to resolve the issue remarks and amend the respective claim elements to conform with DNRC issue remarks.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the changes specified above should be adopted. Post-decree abstracts of the claims accompany this Order to confirm the changes have been made in the State’s centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Weeding Ranch Inc.
PO Box 67
Jordan, MT 59337

\\JUDGALH2OSRV\\Datavol\\Share\\WC-BASIN FOLDERS\\40D PD\\40D Cases\\40D-0302-R-2022\\40D-302 MR- no resp source IR 4-14-23 ld.docx

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG DRY CREEK
BASIN 40D**

Water Right Number: 40D 38856-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

***Owners:** WEEDING RANCH INC
PO BOX 67
JORDAN, MT 59337

Priority Date: DECEMBER 31, 1960

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 60.00 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 40.00

Source Name: UNNAMED TRIBUTARY OF STEVE FORKS

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWSE	1	17N	35E	GARFIELD

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM **Reservoir Name:** CAHILL'S DAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSWSE	1	17N	35E	GARFIELD

Diversion to Reservoir: DIVERSION # 1

Dam Height: 21.70 FEET

Depth: 17.70 FEET

Surface Area: 1.47 ACRES

Capacity: 10.55 ACRE-FEET

SEE THE GARFIELD COUNTY SCS WATER DEVELOPMENT PROJECTS NOTEBOOK
PAGE IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

Period of Use: MARCH 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	30.00		S2NW	1	17N	35E	GARFIELD
2	10.00		N2NESW	1	17N	35E	GARFIELD
Total:	<u>40.00</u>						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

38856-00

38873-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG DRY CREEK
BASIN 40D**

Water Right Number: 40D 38857-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

***Owners:** WEEDING RANCH INC
PO BOX 67
JORDAN, MT 59337

Priority Date: DECEMBER 31, 1963

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

Volume: 12.00 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 8.00

Source Name: UNNAMED TRIBUTARY OF STEVE FORKS

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESW	31	18N	36E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	8.00		SW	31	18N	36E	GARFIELD
Total:	8.00						

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG DRY CREEK
BASIN 40D**

Water Right Number: 40D 38858-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

***Owners:** WEEDING RANCH INC
PO BOX 67
JORDAN, MT 59337

Priority Date: SEPTEMBER 30, 1972

Type of Historical Right: USE

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 15.00 AC-FT
Climatic Area: 1 - HIGH

Maximum Acres: 10.00

Source Name: LONG COULEE
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSESW	24	17N	35E	GARFIELD

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSESW	24	17N	35E	GARFIELD

Diversion to Reservoir: DIVERSION # 1

Period of Use: MARCH 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	7.00		N2SWSE	24	17N	35E	GARFIELD
2	3.00		S2N2SE	24	17N	35E	GARFIELD
Total:	10.00						

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG DRY CREEK
BASIN 40D**

Water Right Number: 40D 38859-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

***Owners:** WEEDING RANCH INC
PO BOX 67
JORDAN, MT 59337

Priority Date: DECEMBER 31, 1961

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

Volume: 15.00 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 12.00

Source Name: UNNAMED TRIBUTARY OF BIG DRY CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2SWNW	9	17N	36E	GARFIELD
Period of Diversion: MARCH 1 TO OCTOBER 31						
Diversion Means: DIKE						
Period of Use: MARCH 1 TO OCTOBER 31						
Place of Use:						

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	12.00		W2SWNW	9	17N	36E	GARFIELD
Total:		12.00					